

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DANIEL BRYAN KELLY,)
)
 Plaintiff,)
)
 vs.) Civil Action No. 2:05-cv-01150-MHT-DRB
)
 RICKY OWENS, et al.)
)
 Defendants.)

PLAINTIFF’S OPPOSITION TO DEFENDANTS BRADLEY, WILSON AND
ROBERSON’S MOTION TO DISMISS

Defendants Bradley, Wilson and Roberson (hereinafter referred to as “Defendants”) acknowledge they have been sued both in their official capacities and in their individual capacities. The Defendants claim they are due to have the claims against them in their official capacities dismissed. Citing *Lancaster v. Monroe County, Ala.*, 116 F.3d 1419 (11th Cir. 1997), the Defendants argue that as state officials the Eleventh Amendment to the U. S. Constitution gives them immunity when sued in their official capacity. Citing *Carr v. City of Florence, Ala.*, 916 F.2d 1521 (11th Cir. 1990) and *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), the Defendants further argue that as state officials they are not “persons” subject to suit under §1983. Those cases are distinguishable from the facts at hand because they require dismissal only when the Plaintiff is seeking monetary damages against a

Defendant in their official capacity.

Here, Plaintiff seeks damages against these Defendants in their individual capacities as well as injunctive and declaratory relief in their official capacities. See Complaint, counts I-V. The U. S. Supreme Court has held that state officials can be sued in their official capacity for injunctive and declaratory relief:

In an injunctive or declaratory action grounded on federal law, the State's immunity *can* be overcome by naming state officials as defendants.

Kentucky v. Graham, 473 U.S. 159, 169 n.18 (1985) (emphasis in the original) (citations omitted).

Likewise, the Supreme Court, in *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n.10 (1989) stated:

Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because “official-capacity actions for prospective relief are not treated as actions against the State.” *Kentucky v. Graham*, 473 U.S., at 167, n. 14, 105 S.Ct., at 3106, n. 14; *Ex parte Young*, 209 U.S. 123, 159-160, 28 S.Ct. 441, 453-454, 52 L.Ed. 714 (1908).

Since the Defendants have been sued in their official capacities for injunctive and declaratory relief, dismissal of Plaintiff’s ‘official capacity’ claims is not appropriate. For these reasons, Plaintiff Daniel Bryan Kelly requests this honorable Court to deny the Motion to Dismiss of Defendants Bradley, Wilson and Roberson.

Respectfully submitted

s/Richard J. Stockham III

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification to the following attorneys of record:

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